

NO. 87-1856

Supreme Court, U.S.

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JOSEPH F. SPANIOLO, JR.
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In The
Supreme Court of the United States
October Term, 1987

RAMSEY ASSOCIATES, INC.,
NORMAND RAMSEY and RAYMOND RAMSEY,
Petitioners,

v.

VICTOR and MARY COTY,
DOROTHY NELSON, d/b/a STOWE COUNTRY
SHOP and ANTON and PAMELA FLORY,
d/b/a DIE ALPENROSE MOTEL,

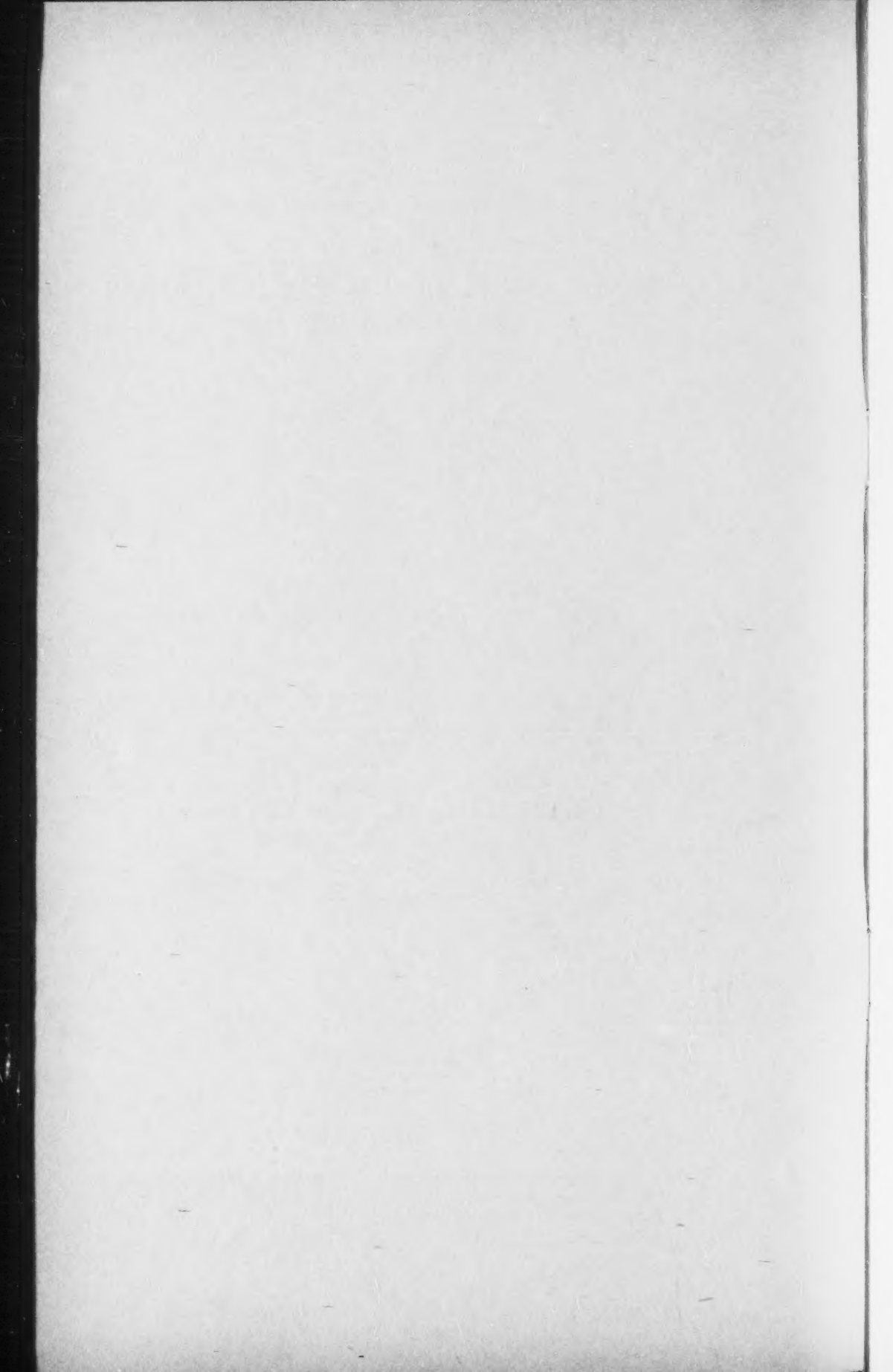
Respondents.

**BRIEF IN OPPOSITION TO PETITION FOR A WRIT
OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF VERMONT**

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June 7, 1988



QUESTIONS PRESENTED

1. Should the petition be granted where petitioners never raised the issue of abridgment of their First Amendment rights prior to oral argument on appeal?

2. Should the petition be granted where the Vermont Supreme Court, using a number of standards, has determined that the award of punitive damages was not excessive and was in keeping with the laws and Constitutions of both the United States and the State of Vermont?

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STATEMENT OF THE CASE

Respondents, residents of Stowe, Vermont, own property across from Petitioners' property which is the last open meadow on the road to the Mt. Mansfield ski area. Petitioners sought a state environmental permit to construct a barrack-like 79-unit "Anchorage" motel capable of holding 340 people on the scenic 16 acre meadow. Respondents successfully opposed the proposed motel on the basis of aesthetics and more importantly that the sewage would pollute their ground water, springs and well. As soon as Petitioners were denied their motel permit in November 1982 they began to construct a piggery on the landmark meadow which was to have 50 pig huts capable of holding 400 pigs. Petitioners dumped 80 tons of foul smelling wet chicken manure directly across from Respondents' properties. Respondents believed this was done merely to spite and humiliate them for their opposition.

Respondents instituted this action to restrain Petitioners from conducting a piggery and from further manure dumpings. Petitioners at a preliminary injunction hearing falsely represented to the trial court that the manure was to be spread over four acres of land to grow corn to feed the pigs and that Petitioners merely planned to run a reasonable farm operation in a husbandry manner. They maintained that the farm was simply a way to make money on their investment in the meadow real estate. Based upon Petitioners' false promises and representations the court refused to enjoin Petitioners from conducting a farm operation, although the trial court indicated it might constitute a nuisance.

Petitioners never spread the manure as promised (even after dumping another 60 tons in the summer of 1983), used hardly any corn to feed its pigs and did not conduct a reasonable farm operation. Instead Petitioners proceeded, at the cost of tens of thousands of dollars, to conduct a foul smelling, unprofitable, dirty, and grotesque piggery and fly-blown feed lot where hundreds of animals died from mistreatment and the lack of foods, water, shelter and care from the fall of 1982 to the spring of 1985. The rotting carcasses of the animals were either strewn on the field or thrown in an open pit. The piggery was conducted with the spiteful and malicious intent to destroy the value of Respondents' residential and commercial properties, to pollute their ground water, springs and well, to interfere with Respondents' peaceful enjoyment of their properties, and to annoy, harass and humiliate Respondents for their continuing opposition to Petitioners' motel plans.

Petitioners' conduct caused the value of Respondents' properties to be substantially reduced due to flies, odors, water pollution, traffic congestion, unsightliness and mistreatment of the animals. Petitioners' outrageous conduct further deprived Respondents of the peaceful enjoyment of their properties and caused them to suffer substantial and severe annoyance, humiliation and mental distress.

After a trial on the merits Judge Linda Levitt enjoined Petitioners from conducting an unreasonable farm operation and awarded Respondents a total of \$187,661 for actual damages and \$380,000 for punitive damages. However, Judge Levitt stated that a pig farm could exist

on the meadow if conducted in a reasonable manner. Despite Petitioners' claims to the contrary the trial judge found that Petitioners had in fact conducted the piggery with the specific malicious intent of harassing Respondents and destroying the value of their properties, in retaliation against Respondents for their lawful opposition to Petitioners' motel plans. The court also found that Petitioners made false promises to the court at the hearing on the preliminary injunction and could have constructed a 15-unit motel instead of the farm.

Petitioners appealed the trial court's decision to the Vermont Supreme Court claiming that the conduct of the so-called farm operation was done lawfully and reasonably and did not substantially interfere with Respondents' property rights or their peaceful enjoyment thereof. Petitioners maintained that Judge Levitt relied heavily on the unsightliness of the farm and went on to argue that unsightliness alone does not constitute a nuisance under Vermont law. Petitioners further asserted that the trial court's award of punitive damages was excessive and an unconstitutional fine and penalty under the Eighth Amendment of the U.S. Constitution.

While Petitioners claim in their petition for writ of certiorari that they raised the First Amendment claim of free speech and protest on appeal, this claim was never properly raised by them below. In fact, until the recent petition Petitioners have maintained that they never intended to annoy anyone by operating the piggery. (Appendix pp. 18a, 44a and 45a.) While Petitioners did raise the issue of whether the punitive damage award was excessive and violative of the Eighth Amendment's exces-

sive fine prohibition, the Vermont Supreme Court specifically addressed this issue. The Vermont Supreme Court determined that the punitive damages award was not excessive and therefore would not violate the Eighth Amendment. (Appendix, pp. 20a-22a.) This was based on the trial court's findings that Petitioners Normand Ramsey and his corporation, Ramsey Associates, Inc., owned a small empire of motels having a net worth of at least three million dollars and that the piggery was conducted with the specific and malicious intent to spite the Respondents for their opposition to Petitioners' proposed motel. The Vermont Supreme Court stated that "Short of physical violence, it is difficult to imagine a situation entailing greater animosity and malevolence than that exhibited here" (Appendix, pp. 21a.)

ARGUMENT FOR DENYING PETITION

I.

Petitioners Never Presented To The Vermont Supreme Court The Issue That Their First Amendment Right To Free Speech Had Been Abridged And No Such Right Was In Fact Abridged.

The United States Supreme Court will only consider review on writ of certiorari of a state court decision where a federal question has been decided by the highest state court in a way that conflicts with other state or federal appellate court decisions or has decided an important question of federal law which has not been but should be decided by the United States Supreme Court. Sup. Ct.

R. 17.1(b) and (c). Here, Petitioners on their appeal to the Vermont Supreme Court never claimed that the piggery was intended as a protest or that the trial court violated their First Amendment rights by awarding damages for the way the piggery was conducted. Petitioners have continually disavowed any intent to create a nuisance through trial and on appeal. Their present claim that the nuisance was created as an intentional protest is a total reversal of their position below.* (Appendix, pp. 5a, 6a, 10a, 18a and 38a.) Since the protest issue was never presented to the Vermont Supreme Court, review of this issue should not be granted by way of a writ of certiorari. *Ellis v. Dixon*, 349 U.S. 458 (1955) *rehearing denied* 350 U.S. 855 (1955).

In any event, Petitioners' First Amendment rights were not abridged since they were not enjoined from conducting a pig farm in a reasonable manner. Also the Vermont Supreme Court found that the case involved much more than mere unsightliness and that the trial court's finding of nuisance " . . . was based in large part upon the odors, the flies and the offensive animal practices." (Appendix, p. 10a.) Clearly, state courts cannot be said to abridge freedom of speech by awarding damages for a substantial nuisance or trespass and preventing such conduct as was done in this case. *See, Adlerly v. State of Fla.*, 385 U.S. 39 (1966), *rehearing denied* 385 U.S. 1020 (1967). *See, e.g. Greenmoss Builders*

*The only constitutional issue raised below was that under Vermont's Constitution and case law it may be unconstitutional in Vermont to base a nuisance on unsightliness alone. (Appendix, p. 4a.)

v. Dunn & Bradstreet, Inc., 143 Vt. 66 (1983), *aff'd* 472 U.S. 749 (1985).

II.

Petitioners Claim That The Punitive Damage Award Was An Excessive Fine And Penalty Was Decided By The Vermont Supreme Court In Keeping With The United States Supreme Court's Recent Decisions.

While Petitioners claim the punitive damage award of \$380,000 which was awarded to Respondents in addition to the \$187,661 actual damage award is an excessive fine or penalty, they failed to state any reason why the award is excessive other than the amount of the award.* Assuming punitive damages are within the ambit of the Eighth Amendment's prohibition against excessive fines, Petitioners have not shown or argued that any element of an excessive fine exists such as a showing that the damages are disproportionate to the offense.

In any event the Vermont Supreme Court considered the claims of Petitioners and determined that the punitive damages were neither disproportionate to the offense nor excessive based on Vermont law and similar cases and therefore would not violate the Eighth Amendment assuming it applied. The Vermont Supreme Court affirmed the award since Normand Ramsey and Ramsey Associates, Inc. had net worths in excess of three million dollars, had established and maintained the farm as a nuisance solely to spite Respondents and had no other motive

*While Petitioners now maintain that punitive damages cannot be constitutionally sanctioned they never raised this argument before the Vermont Supreme Court. (Appendix, p. 4a.)

in mind in operating the farm, despite their claims to the contrary. (Appendix, pp. 20a-22a.) Since the Vermont Supreme Court's decision is in keeping with other state and federal appellate courts' decisions and the award is not excessive given the facts of the case, the petition for writ of certiorari should be denied. Sup. Ct. R. 17.1 (b) and (c). It should be noted that the United States Supreme Court recently affirmed a Vermont Supreme Court decision where \$300,000 of punitive damages were awarded where the actual damage award was \$50,000 and no spite was shown. *Greenmoss, supra*.

CONCLUSION

There are no special or important reasons for the United States Supreme Court to grant review on writ of certiorari in this case. The First Amendment claim cannot now be raised since it was not properly raised before the Vermont Supreme Court. The Eighth Amendment claim has already been decided by the Vermont Supreme Court in a manner which is consistent with both the federal and state Constitutions and laws and the U.S. Supreme Court's decisions in this area.

Respectfully submitted,

HAROLD B. STEVENS, Esq.

Attorney for Respondents

June 7, 1988